IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr.Justice K. GNANAPRAKASAM

Civil Miscellaneous Appeal No. 690 of 1994
and
Cross Objection No.73 of 1995.

C.M.A.No. 690/94.
Oriental Insurance Company Ltd.,
Branch Office, Police Station Road,
Pollachi Post, 642 001. .. Appellant/3rd respondent.

-Vs-

1. C. Santhamani,
2. C. Rajaram,
3. C. Sriram,
4. C. Sarathram,
..Petitioners.
5. R. Marimuthu,
6. V. Balakrishnan,
7. New India Assurance
Co., Ltd., Branch Office,
389-391, Cross Cut Road,
Coimbatore.
..Respondents 1,2 and 4.

..Respondents.

Cross Objection No. 73/1995

1. C. Santhamani,
2. C. Rajaram,
3. C. Sriram
4. C. Sarathram.

..Cross Objectors.
Vs.
1. Oriental Insurance Co.,Ltd.,
Branch Office, Police Station
Road, Pollachi,642 001.
2. R. Marimuthu,
3. V. Balakrishnan,

4. New India Assurance Co.,Ltd.,
Branch Office, Coimbatore-11.

.. Respondents in Cross
Objection.

Appeal against the Judgment and Decree made in M.C.O.P.No. 224/90 dated 10-01-1994, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Coimbatore.

!For appellant and 1st respondent :: Mr. M.B. Raghavan
in Cross Objection.

^For Respondents 1 to 4 in C.M.A :: Mr. K. Mohanram for Mr. S. Kadarkarai
and Cross Objectors.

:JUDGMENT

(Judgment of the Court was made by P. Sathasivam, J.)

Since the appeal and Cross Objection arise against the very same award of the Motor Accidents Claims Tribunal, Coimbatore, the same are being disposed of by the following common judgment. Aggrieved by the award of the Motor Accidents Claims Tribunal, Coimbatore dated 10-1-94 in M.C.O.P.No. 224/90, Oriental Insurance Company, Pollachi has filed C.M.A.No. 690/94. Respondents 1 to 4 in this appeal, claimants have filed Cross Objection No.73/95, seeking further compensation of Rs.1,00,000/-.

2. Heard the learned counsel for the appellant as well as contesting respondents 1 to 4.

3. Mr. M.B. Raghavan, learned counsel for the appellant Insurance Company, by drawing our attention to Section 95 (2) (a) of Motor Vehicles Act, 1939 and terms and conditions of policy of insurance, namely, Ex.B-5, would contend that their liability is restricted to Rs.1,50,000/- only and that the Tribunal committed an error in passing the entire liability on the Insurance Company which is unsustainable in law. Regarding cross objection, it is his contention that inasmuch as the appeal is only by the Insurance Company questioning its liability, the cross objection in their appeal by the claimants is not maintainable and liable to be dismissed. On the other hand, Mr. K. Mohan Ram, learned counsel for the respondents 1 to 4/claimants, would contend that the deceased being a third party, and in the light of valid insurance policy, the appellant insurance company is liable to pay the entire amount and the same has been rightly granted by the Tribunal. In any event, according to him, even if the case of the appellant is acceptable, direction may be issued for payment of the entire amount by the insurance company at the first instance with a liberty to them to recover the same from the owner of the vehicle. In so far as the cross objection is concerned, it is stated that the compensation was arrived at after applying proper multiplier, and the deduction of 1/4th amount towards uncertainty of life etc., cannot be

sustained, accordingly the cross objectors are entitled to a further compensation of Rs.1,00,000/-.

4. We have carefully considered the rival submissions.

5. First we shall consider the stand taken by the Insurance Company.

6. In terms of section 95 (2) (a) of the Motor Vehicles Act, 1939, the insurance company is obliged to satisfy the liability to an extent of Rs.1,50,000/- in so far as goods carriage vehicle is concerned. However, it is the case of the respondents 1 to 4/claimants that inasmuch as the insurance covers third party risk, the liability is unlimited. First we shall consider the policy of insurance which has been marked as Ex.B-5 through R.W.1. After referring to the registration No., owner of the vehicle etc., Ex.B-5 contains the following details:

"SCHEDULE OF PREMIUM IN RUPEES
B. Liability to public risk
Add:for LL to authorised non-fare paying
passengers as per ENDT, IMT-14(b) Rs240.00
Total No.of authorised non fare
paying passengers. Rs.

Limit any one passenger Rs.10000/- Rs36.00

Limit any one accident Rs.50000/-

Add:LL to paid driver and/or Cleaner/
Coolies as per ENDT.IMT-16 Rs.16.00

Add:for increased T.P.Limits under
Section 11 1(i) unlimited
Under sec.11 1(ii) Rs. Rs.

292.00

Add: Rs.

Less 10% Special Discount Rs.

Absolute Net Premium 'B' Rs.
Absolute Net Premium 'A' Rs.

Total Net Premium A +B Rs.

Net Premium Due (rounded off) 292.00

Subject to Endorsement Nos.2a,14b,16 & Warranty Printed/
Attached here to?"

By pointing out the fact that in view of payment of premium of Rs.240 /- towards third party risks (TPR), it is contended on the side of the claimants that the liability of the insurance company is unlimited. On the other hand, it is the case of the insurance company that, in the absence of payment of additional premium, the liability is to the extent of Rs.1,50,000/-. The Motor Insurance Rating Guide, which sets out the provisions relating to the benefits under motor insurance, has defined the types of insurance policies. Though the Motor Insurance Rating Guide has not been marked, the same was produced at the time of the argument and we have perused and considered the various clauses therein, particularly the liability to public risk policy. In our case, the policy is a third party liability insurance policy. Learned counsel appearing for the appellant has also brought to our notice a Division Bench judgment of this Court (P. Shanmugam and P. Thangavel, JJ) dated 14-02-2002 made in C.M.A.No. 252/95 (National Insurance Company Ltd., Kumbakonam vs. Pakkiriammal and 5 others) wherein the Bench has considered this identical question with reference to Section 95 (1), (2) (a) of the Motor Vehicles Act, 1939. The Division Bench has extracted the relevant clauses from the Motor Insurance Rating Guide. After referring to various types of Insurance Policies and the liability to the Public risk, the Bench has concluded that,

"5. As per the definitions of the three types of policies, we find that each one of them are distinct and separate. The comprehensive insurance policy covers the following risks:
(a) Public risk including Act Liability
(b) Loss or damage to the vehicle's risk
The Public Risk Policy indemnifies the legal liability in respect of third party accidental personal injury or property damage by the vehicle. The Act Liability Policy covers the third party risks in a public place.

In both the policies, expressions 'legal liability for claims' have been used and in the Act Liability Policy, a further expression "as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939" has been included. But, none of the policies say that the liability is unlimited. Even in reference to comprehensive policy, it says that the liability is subject to the limitation mentioned in the policy and the liability to the public risk, including act liability. By going through the schedule of Premium, it is seen that the premium differs from the public risk and the act only liability and the minimum premium payable for goods carrying vehicle for public risk is Rs.240/-. If there has to be additional benefit under commercial vehicles' tariff for a personal injury or unlimited property damage up-to Rs.3 lakhs, an additional premium of Rs.150/- is to be paid. The Note under this additional benefit clause makes it clear that the limits of indemnity under the policy may be increased in accordance with the scale. From the above, it is clear that the liability is limited to the extent mentioned under the Act unless and until additional premium is paid."
In our case, we have already referred to the details of payments under Ex. B-5. It is clear that as per policy-Ex.B-5, the owner has paid the minimum bonus for third party risks plus Rs.16/- for paid driver and cleaner, but he has not paid additional amount for increased T. P.limits. As rightly contended by the learned counsel for the Insurance company, if the owner had

to get an unlimited legal liability, he should have paid extra premium, which has not been done in our case. Earlier the Division Bench after considering a decision of the Supreme Court in NATIONAL INSURANCE COMPANY LIMITED Vs. JUGAL KISHORE [A. I.R. 1998 S.C. 719], earlier Division Bench decision of this Court in NEW INDIA ASSURANCE COMPANY LIMITED Vs. K. CHANDRA [1991 A.C.J. 386], and another Division Bench decision in ORIENTAL INSURANCE COMPANY LTD. Vs. JALAJA & OTHERS [1995 A.C.J. 829] held that the insurance company is not liable to pay anything more than the amount limited in the statute unless the policy contains a different provision. In NEW INDIA ASSURANCE COMPANY LIMITED Vs. SHANTHI BAI [1995 A.C.J. 470], the Supreme Court, after referring to Section 95 of the Act, held as follows:

"Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 9 5 of the Act. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf."

It is clear from the above decision that even the comprehensive policy does not automatically result in covering the liability of third party risk for the amount higher than the statutory limit. Similar view has been expressed by a Division Bench of this Court in NEW INDIA ASSURANCE COMPANY LIMITED Vs. R.K. GEETHA AND ANOTHER [Vol.I (1999) A.C.C. 535]. In NATIONAL INSURANCE COMPANY LIMITED Vs. NATHILAL AND OTHERS [1999 (1) S.C.C. 552], the Hon'ble Supreme Court has held that in the absence of payment of any special premium for the purpose of unlimited liability, it is presumed that the terms of the policy were limited to Rs.1,50,000/-. Apart from the above decisions, learned counsel for the appellant has also relied on a decision of this Court in NATIONAL INSURANCE COMPANY LIMITED, ERODE v. BOOPATHI alias VENKATACHALAPATHY [1999 (II) M.L.J. 653] wherein one of us (P. Sathasivam, J.), after following the Division Bench decision in NEW INDIA ASSURANCE CO. TD., v. K. CHANDRA [1991 A.C.J. 386] held that under Section 95 (2) (b) of the Motor Vehicles Act, 1939 , the insurance company is not liable to pay anything more than the amount limited by the Statute unless the policy contains a different provision. In that case, after referring to Ex.R-1 policy of insurance, it is held that the liability of the insurance company is restricted to Rs.1,50,000/- only. We are in agreement with the said conclusion.

7. Mr.K. Mohan Ram, learned counsel for the respondents 1 to 4/claimants, would contend that in the event of taking a decision that in terms of Ex.B-5, the liability of the insurance company is limited to Rs.1,50,000/-, they may be directed to pay the entire amount as awarded to the claimants with a right to recover from the insured the excess amount over and above covered under the policy. In support of his claim, he very much relied on a decision of the Supreme Court in ORIENTAL INSURANCE COMPANY LTD., v. C. NAFEESSU [2001 (1) UJ 378 (SC): [2001 A.C.J page 1] wherein Their Lordships have held that the insurance company is liable to pay the entire award amount to the claimants. They further held that upon making such payment, the insurance company can recover the excess amount from the insured by executing the

award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. By relying upon the above judgment, learned counsel for the respondents 1 to 4 prayed for necessary direction to the insurance company to pay the entire liability. In this regard, learned counsel for the appellant pressed into service a recent judgment of the Constitution Bench of the Supreme Court in NEW INDIA ASSURANCE COMPANY LTD., v. C.M. JAYA & OTHERS [2002 ACJ 271] : [2002 A.I.R. S.C.W 259]. After considering 2,3 Judges Bench decisions of the Supreme Court, namely, NEW INDIA

ASSURANCE CO., LTD. v. SHANTI BAI [1995 A.C.J.470 (SC)] and AMRIT LAL SOOD v. KAUSHALYA DEVI THAPAR [1998 ACJ 531 (SC)], Their Lordships have concluded as follows: (para 11)

"11. In the premise, we hold that the view expressed by the Bench of the three learned Judges in the case of SHANTI BAI, 1995 ACJ 470 (SC), is correct and answer the question set out in the order of reference in the beginning as under:

In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under section 95 (2) of the Act and would not be liable to pay the entire amount."

In the light of the principle laid down by the Constitution Bench in the above judgment, we hold that the liability of the insurance company is limited to Rs.1,50,000/-, and the insured is bound to pay the remaining amount of compensation. It is also relevant to note that similar contention was raised before the Division Bench of this Court in C.M.A.No. 252/95 dated 14-02-2002 (cited supra). There also the Division Bench, in the light of the Constitution Bench of the Supreme Court in 2002 A.I.R. S.C.W. 259 (cited supra), arrived a similar conclusion that in the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to the third party, the insurer would be liable to the extent limited under Section 92 of the Act and would not be liable to pay the entire amount. The said view of the Division Bench of this Court and the present view of us are in consonance with the view expressed by the Constitution Bench of the Supreme Court. Accordingly, in view of the fact that higher premium had not been paid for unlimited liability for payment of compensation to third party, we hold that the liability of the appellant-insurer is limited to Rs.1,50,000/- and the insured is liable to pay the remaining amount of compensation.

8. Even at the outset, learned counsel appearing for the appellant insurance company pointed out that inasmuch as they are questioning their liability, the Cross Objection by the claimants in this appeal is not maintainable. In support of the above contention regarding maintainability of the Memorandum of Cross Objection, the insurance company relied on a Division Bench decision of this Court in UNITED INDIA INSURANCE CO.LTD. v. M.R. SUBRAMANIAN & ANOTHER [1996 ACJ 1260]. In that decision, it was pointed out that since the appeal is confined to the liability of the insurance company and in that appeal the

claimant cannot make a claim for enhancement, which is really directed against the owner of the vehicle who is a co-respondent in the appeal. After referring to the earlier Division Bench decision of this Court in UNITED INDIA INSURANCE COMPANY LTD., v. RAJAMMAL [1993 A.C.J 486 (Madras)], and after expressing their agreement with the decision arrived at therein, the Division Bench has held that the memorandum of cross objection is not maintainable and dismissed the same. In the light of the said contention, we have carefully considered the facts in the decision of the Division Bench referred to above and various grounds raised in this appeal. As rightly pointed out by Mr. K. Mohan Ram, learned counsel for cross objectors, though the insurance company has mainly contended their limited liability in terms of Section 92 (2) of the Motor Vehicles Act, 1939, a perusal of their grounds of appeal shows that they challenged the entire award of compensation, including interest, as directed by the Tribunal and after arriving the value of the appeal, paid court-fee for the entire amount. It is clear that the entire amount as awarded by the Tribunal including interest and costs are being questioned in this appeal. In this regard, it is relevant to refer a decision of the Supreme Court in M/ s. BIHAR SUPPLY SYNDICATE v. ASIATIC NAVIGATION [AIR 1993 Supreme Court 2054]. In the said decision, Their Lordships, after referring to Order 41 Rule 33, Civil Procedure Code, have observed thus: (para 29)

"29. Really speaking the Rule is in three parts. The first part confers on the appellate Court very wide powers to pass such orders in appeal as the case may require. The second part contemplates that this wide power will be exercised by the appellate Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The third part is where there have been decrees in cross-suits or where two or more decrees are passed in one suit, this power is directed to be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."

In the light of the decision of the Supreme Court, more particularly in view of the fact that the entire amount is being questioned in the memorandum of appeal by paying requisite court-fee (though in the argument they confined to their liability to the extent of Section 92 (2) of the Motor Vehicles Act, 1939), in view of the peculiar circumstances of the case, we hold that the present cross objection is maintainable and we intend to consider the merits of the same in the subsequent paragraph.

9. Now we shall consider the cross objection No.735 filed by respondents 1 to 4 herein seeking a further compensation of Rs.1,00,000/- in addition to the amount awarded by the Tribunal. Since in the cross appeal the cross objectors restricted their claim to the extent of Rs.1,00,000/-, the only issue to be considered in the cross appeal is whether they (cross objectors) are entitled to a further compensation of Rs.1,00,000/- as claimed. It is seen from the evidence of P.W.1, second claimant that at the time of the accident, the deceased father was aged about 58 years and at the relevant time, he was working as an Adviser in textile mills. He further deposed that his father secured decree in textiles in the United States and on the date of retirement in 1987 he was getting Rs.15,000/-p.m. According to him, even after his

retirement, he was employed as the Adviser in Narasimma Mill and was getting sizeable income. Though the claimants have produced acceptable documentary evidence in respect of his avocation, income, payment of income tax etc., taking note of all the aspects including the fact that the second claimant (P.W.1) and third claimant are earning members, the Tribunal arrived an amount of Rs.7,75 0/- as his monthly income and Rs.93,000/- as his annual income and after deducting a portion towards his personal expenses, it arrived a conclusion that he would contribute at least Rs.6,000/- per month to his family and annual contribution would be Rs.72,000/-. Based on the evidence of P.W.1 and upon the reference made in the post-mortem certificate-Ex.P-7, the Tribunal fixed the age of the deceased as 58 years which is acceptable. After holding that but for the accident, the deceased Chandrasekaran would live up-to the age of 65, multiplied the same by multiplier of 7 and arrived an amount of Rs.5,04,000/-. From and out of the said amount, the Tribunal deducted 1/4th towards uncertainty of life and arrived an amount of Rs.3,78,000/- as loss caused to the claimants. After adding a sum of Rs.15,000/- towards loss of love and affection, mental agony etc., Rs.25,000/- towards damage to his vehicle and other belongings, passed an award for Rs.04,18,000 /-. Considering the fact that the deceased was aged about 58 years on the date of the accident, in the light of his educational qualification and of the fact that even after retirement he was working as Adviser to many textile mills, we are of the view that as rightly observed by the Tribunal, undoubtedly, he would contribute at least Rs.6,00 0/- per month to his family till 65 years. Likewise, the application of 7 years multiplier for arriving a pecuniary loss to the family is also quite reasonable. As stated earlier, it is to be noted that even on the date of filing of the claim petition, the claimants 2 and 3 were not depending on the deceased. However, as rightly contended by the learned counsel for the cross objectors, having applied multiplier method and selecting proper multiplier, namely, 7, the Tribunal is not justified in deducting 1/4th of the amount towards uncertainty of life. We have already referred to the fact that the Tribunal after fixing that the deceased would earn Rs.7,750/-, deducted a portion towards his personal expense and arrived Rs.6,000/-per month as his contribution to his family. When multiplier is adopted, there is no need to deduct amount towards uncertainty. In this regard, it is useful to note a Division Bench decision of this Court in VIJAYALAKSHMI, C. & ANOTHER v. N. SIVA BAGIYAM 7 ANOTHER [1996-2-L.W. 238]. In that decision, while determining the amount by applying multiplier method, speaking for the Bench, one of us (P. Sath asivam, J) has held that if proper multiplier and multiplicant is applied and the same is reasonable, there is no need to deduct any amount towards uncertainty of life and lump sum payment. Since the Tribunal in our case selected proper multiplier and fixed acceptable multiplicant, as stated in the Division Bench decision, there is no need to deduct 1/4th towards uncertainty of life. In such a circumstance, we hold that the Tribunal committed an error in allowing a deduction of 1/4th of the amount towards uncertainty of life. We set aside the said order of the Tribunal. Inasmuch as the deducted amount towards uncertainty of life is Rs.1,26,000/-, and in view of our conclusion, we hold that the claimants are entitled to the said amount, however, in the cross objection, they are claiming Rs.1,00,000/- only, hence we grant the same as claimed.

10. In the light of what is stated above, we pass the following order:

(i) The award of compensation of Rs.4,18,000/- fixed by the Tribunal is enhanced to Rs.5,18,000/- (Rs.4,18,000 + Rs.1,00,000) with interest at 9 per cent per annum (for the enhanced amount) from the date of petition till date of payment;

(ii) Out of the said amount of Rs.5,18,000/-, the liability of the appellant-Insurance Company is limited to Rs.1,50,000/- in terms of Ex. B-5-Insurance policy;

(iii) The insured of the vehicle-lorry/ R.Marimuthu/5th respondent herein, is liable to pay the balance amount over and above Rs.1 ,50,000/- to the claimants.

(iv) The first respondent herein - C. Santhamani, wife of the deceased Chandrasekar is entitled to the enhanced compensation as ordered above.

The Civil Miscellaneous Appeal as well as the Cross Objection are allowed to the extent mentioned above. No costs.

R.B.

Index:- Yes
Internet:- Yes

To:-1) The Motor Accidents Claims Tribunal (Sub Court),
Coimbatore (with records).

2) The Section Officer, V.R. Section, High Court,
Madras.